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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,290	04/11/2006	Leon Maria Van De Kerkhof	NL 031266	1779

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EXAMINER
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WILLIAMS, JEFFERY L

ART UNIT	PAPER NUMBER
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2137

MAIL DATE	DELIVERY MODE
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08/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,290	<b>Applicant(s)</b> VAN DE KERKHOF ET AL.	
	<b>Examiner</b> JEFFERY WILLIAMS	<b>Art Unit</b> 2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/11/06.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

Claims 1 – 28 are pending.

***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1 – 3, 6 - 20, 23 – 25, 27, and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Regarding claims 1 – 3, 6 - 20 and 23 – 25, they are rejected as they are directed to a system implemented as software (e.g. see applicant's specification, pg. 16, par. 1). Software per se. fails to fall within any one of the statutory categories of invention.

Regarding claims 27 and 28, they are rejected as they are directed to a computer program and a computer program recorded upon a carrier (e.g. signal). Software per se. and signals bearing software fail to fall within any one of the statutory categories of invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 11, 13, 14, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 11, it is rejected for lacking clarity and it appears nonsensical. Specifically, claim 11 directly contradicts parent claim 8. Claim 8 recites that the "encoding assistance data" comprises "scale factor data". However, claim 11 recites that the "encoding assistance data" does not comprise "scale factor data". Thus, a reasonable interpretation of claim 11 is not available to one of ordinary skill in the art.

Claim 13 recites the limitation "the scale-factors of the pre-encoded signal" in line 2. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination, the examiner presumes the applicant to recite "scale-factors of the pre-encoded signal".

Regarding claim 14, the term "substantially independent" is a relative term which renders the claim indefinite. The term "substantially independent" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Namely, one of ordinary skill in the art can not reasonably assess whether the claim recites parameters that are independent or parameters that are not independent. For the purpose of examination, the examiner presumes the applicant to recite "independent".

Claim 13 recites the limitation "the scale-factors of the pre-encoded signal" in line 2. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination, the examiner presumes the applicant to recite "scale-factors of the pre-encoded signal".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1           **Claims 1 – 9, 11, 16 – 22, 27, and 28 are rejected under 35 U.S.C. 102(b) as**  
2           **being anticipated by Hiroshi et al. (Hiroshi), "Digital Audio System", U.S. Patent**  
3           **Publication, 2002/0002412 A1.**

4  
5           Regarding claim 1, Hiroshi discloses:  
6           *means (101) for receiving a signal (fig. 4:15; fig. 13:15);*  
7           *a pre-encoder (103) for pre-encoding the signal to generate a pre-encoded signal*  
8           *(fig. 9:10; fig. 4:22; fig. 13:22; par. 45; 46);*  
9           *a watermark processing means (109) comprising (fig. 9):*  
10           *a decoder (111) for decoding the pre-encoded signal to generate a decoded*  
11           *signal (fig. 9:11),*  
12           *a watermark embedder (113) for inserting a watermark in the decoded signal to*  
13           *generate a watermarked signal (fig. 9:18),*  
14           *a re-encoder (117) for re-encoding the watermarked signal to generate a*  
15           *watermarked encoded signal (fig. 9:22);*  
16           *and wherein the pre-encoder (103) is operable to generate encoding assistance*  
17           *data and the re-encoder (117) is operable to re-encode the watermarked signal in*  
18           *response to the encoding assistance data (par. 45, 46, 74, 75).*

19  
20           Regarding claim 2, Hiroshi discloses:  
21           *wherein the pre-encoder (103) is operable to include the encoding assistance*  
22           *data in the pre-encoded signal (par. 51, 52).*

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Regarding claim 3, Hiroshi discloses:

*wherein the pre-encoder (103) is operable to include the encoding assistance data in at least one ancillary data section of the pre-encoded signal (par. 50).*

Regarding claim 4, Hiroshi discloses:

*storage means (105) for storing the pre-encoded signal (fig. 13:10).*

Regarding claim 5, Hiroshi discloses:

*wherein the storage means (105) is operable to store the encoding assistance data (fig. 3:f; fig. 13:10 – herein it is noted that encoded data includes encoding assistance data and the encoded data is stored in memory).*

Regarding claim 7, Hiroshi discloses:

*wherein the encoding assistance data comprises encoding quantisation control data (par. 17, 48, 49, 55).*

Regarding claim 8, Hiroshi discloses:

*wherein the encoding assistance data comprises encoding scale factor data (par. 49, 50).*

Regarding claim 9, Hiroshi discloses:

1        *wherein the encoding scale factor data comprises a scale factor offset associated*  
2        *with a scale factor offset value between a first encoding rate and a second encoding*  
3        *rate (par. 49, 50).*

4  
5        Regarding claim 11, it is rejected because, as best understood by the examiner,  
6        Hiroshi discloses scale factor values as required by claim 8.

7  
8        Regarding claim 16, Hiroshi discloses:  
9        *wherein the encoding assistance data comprises perceptual model data (par. 7,*  
10       *54) .*

11  
12       Regarding claim 17, Hiroshi discloses:  
13       *wherein the re-encoder (117) is operable to operate frame aligned with the pre-*  
14       *encoder (103) (par. 51, 52, 57, 58).*

15  
16       Regarding claims 18 - 20, Hiroshi discloses:  
17       *wherein the signal is an audio signal; wherein the pre-encoded signal is pre-*  
18       *encoded in accordance with an MPEG audio compression standard; wherein the signal*  
19       *is a video signal (par. 71, 72).*

20  
21       Regarding claim 21, Hiroshi discloses:



1        *wherein the pre-encoder (103) is operable to pre-encode a multiplicity of signals;*  
2        *the storage means (105) is operable to store the multiplicity of signals and the*  
3        *watermark processing means (109) is operable to individually embed a watermark in a*  
4        *plurality of signals, and further comprising means (119) for distributing the plurality of*  
5        *signals* (Abstract, par. 7 – 9, herein Hiroshi discloses that the invention is operable  
6        respecting more than one signal).

7  
8        Regarding claims 22, 27, and 28, they comprise method, program, and medium  
9        recitations, essentially similar to claim 1, and they are rejected, at least for the same  
10       reasons as claim 1.

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13                    ***Claim Rejections - 35 USC § 103***

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15        The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
16        obviousness rejections set forth in this Office action:

17                (a) A patent may not be obtained though the invention is not identically disclosed or described as set  
18                forth in section 102 of this title, if the differences between the subject matter sought to be patented and  
19                the prior art are such that the subject matter as a whole would have been obvious at the time the  
20                invention was made to a person having ordinary skill in the art to which said subject matter pertains.  
21                Patentability shall not be negated by the manner in which the invention was made.

22  
23                **Claims 6, 10, 12 – 15, and 23 – 26 are rejected under 35 U.S.C. 103(a) as**  
24        **being unpatentable over Hiroshi in view of Katayama et al. (Katayama), "Coding**  
25        **Device, Coding Method, Program and Recording Medium", U.S. Patent**  
26        **Publication 2002/0034376 A1.**

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2           Regarding claims 23 and 26, they are rejected, at least, for the same reasons as  
3 claim 1. Furthermore, Hiroshi discloses a means to encode a signal at a first encoding  
4 rate, means for generating encoding assistance data, and means for utilizing the  
5 encoding assistance data to re-encode the signal (Hiroshi, fig. 4:15; fig. 13:15, par. 50).  
6 Hiroshi, however, does not appear to explicitly recite that the generated encoding  
7 assistance data includes “scale factor offset data” for re-encoding a signal at a second  
8 encoding rate.

9           Katayama discloses that an encoder may include encoding assistance data  
10 comprising “scale factor offset data” for enabling a re-encoder to encode the signal at a  
11 second encoding rate (Katayama, par. 10 - 12).

12           It would have been obvious to one of ordinary skill in the art to employ the  
13 methods of Katayama within Hiroshi. This would have been obvious because one of  
14 ordinary skill in the art would have been motivated by the flexibility to efficiently utilize  
15 encode signals on a systems with different bandwidth characteristics (Katayama, par. 4  
16 – 6).

17

18           Regarding claims 23 and 24, the combination enables:

19           *wherein the pre-encoder (103) is operable to include the encoding assistance*  
20 *data in the pre-encoded signal; wherein the pre-encoder is operable to replace the*  
21 *scale-factors of the pre-encoded signal by a shifted version of the scale-factors of the*  
22 *second encoding rate* (Katayama, par. 10-12).

Regarding claims 6, 10, 12 - 15, they comprise essentially similar recitations as claims 23 – 26, and they are rejected, at least, for the same reasons as claims 23 - 26.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

***See Notice of References Cited.***

A shortened statutory period for reply is set to expire **3** months (not less than 90 days) from the mailing date of this communication.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery Williams whose telephone number is (571) 272-7965. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2136

1           Information regarding the status of an application may be obtained from the  
2 Patent Application Information Retrieval (PAIR) system. Status information for  
3 published applications may be obtained from either Private PAIR or Public PAIR.  
4 Status information for unpublished applications is available through Private PAIR only.  
5 For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
6 you have questions on access to the Private PAIR system, contact the Electronic  
7 Business Center (EBC) at 866-217-9197 (toll-free).

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